IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 387 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOVINDBHAI JOITABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 387 of 2004

MR KB ANANDJIWALA for Petitioner No. 1

Mr.H.M.Prachchhak, learned Addl.P.P. for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI

Date of decision: 22/06/2004

23/6/2004

ORAL JUDGEMENT

1. Rule. Mr.H.M.Prachchhak, learned Addl.P.P.,

waives service of rule on behalf of respondent. By consent of the counsel appearing in the matter, rule is fixed forthwith.

2. The petitioner - original accused has challenged the observation made by the learned Special Judge while recording evidence of Shri Venkateshan Thirupugal P.W.4, in which during cross examination of the said witness, a request was made by the defence for production of the letter issued by the Director of ACB addressed to D.D.O. by which sanction to prosecute was sought for against the petitioner accused, as referred to by the witness in his deposition at paragraph 5. The said request was opposed by the learned P.P. on the ground that the said letter is being confidential letter between the Director of ACB and DDO and as the letter being of confidential nature it cannot be produced. The learned Presiding Officer has accordingly while recording the evidence put a note by referring the said letter which was a confidential letter and the same was issued by the Director of ACB to DDO, being a confidential letter, the request of the defence was rejected. It is this observation for rejection of production of letter, the petitioner has challenged by filing this Revision Application.

3. The evidence was recorded on 9.6.2004 and, thereafter, the Application Exh.62 was submitted on behalf of the petitioner accused for seeking adjournment on the ground that the petitioner accused wants to challenge the said order by filing Revision Application before the High Court and requested for postponement of the cross examination of the said witness and the petitioner has also annexed the certified copy of the application Exh.62 in which the petitioner has highlighted the grounds for production of the said document in the interest of justice and the said document was relevant, being an important document, in the interest of justice for his defence and the learned Special Judge has also passed order, which is illegible even from the certified copy and accordingly the Registry was directed to contact the Registry of the Special Court and obtain the order passed by the learned Special Judge on telephone and Registry has accordingly contacted on phone the Registry of the trial court and on phone the order was obtained, which was passed, which reads as under:-

"It is hereby directed that ask necessary xerox copy of the document and bring the stay upto 17/6/04 or on or before.

Sd/-
Special Judge,
D.R.Shah.

The said writing is taken on the file.

4. When the matter was before me on 18.6.2004, considering the request made by Mr. Anandjiwala, the matter was adjourned to 22.6.2004 and while adjourning the matter I had requested Mr. Prachchhak, learned Addl.P.P., to get the file in respect of the sanction to prosecute, which was issued and the letter, which was forwarded by the Director of ACB to D.D.O. Accordingly the learned Addl.P.P. has during hearing placed on my hand the file regarding sanction to prosecute the accused containing the letter issued by Director of ACB to DDO. As observed earlier, even considering the request made by the defence and the objections raised by the learned P.P., the Presiding Officer has also perused the said letter and accordingly put a note to show that the confidential letter was issued by Director of ACB to the DDO and the said letter was issued under Outward Number from Director of ACB to DDO.

5. I have perused the said letter. The letter is a confidential letter issued by the Director of ACB to DDO by highlighting about the successful trap carried out on the complaint filed by the complainant before the ACB and all the papers of investigation running into pages 1 to 189 were forwarded to the DDO under the said Confidential letter and as the petitioner accused was being a public servant the sanction to prosecute was sought for. To prove the sanction to prosecute the accused, the prosecution has led evidence of Shri Venkateshan Thirupugal P.W.4, who was at the relevant time serving as a DDO and the sanction to prosecute accused is exhibited through his evidence which is at Exh.61. The said witness has been cross examined by the learned advocate for the accused and during cross examination in respect of issuance of sanction, when the papers of investigation were forwarded under confidential letter to obtain sanction to prosecute the accused, a request was made for production of the said letter. The witness has given sanction to prosecute the accused. The letter was issued by the Director of ACB under which the papers were forwarded for consideration for according sanction and in the evidence the witness has referred to that he has received the said forwarding letter and when the request was made, the learned P.P. has objected for such production on the ground that the said letter is a

confidential letter between two authorities. The sanction to prosecute is already produced on the record of the case, which is at Exh.61. Such communication between two authorities is always being a confidential letter and as found, the papers of investigation are forwarded under the letter itself. As the petitioner accused being a public servant and when the trap was found successful, the sanction to prosecute is necessary and accordingly the Director of ACB under his Confidential Letter has forwarded the papers of investigation for which the sanctioning authority has to apply his mind whether to accord sanction or not. In my view, merely on the top of the letter by mentioning "Confidential" does not mean that any privilege is to be claimed as contemplated in respect of production of any document.

6. Mr. Anandjiwala has placed reliance upon the decision in the matter of Rafia Sultan v. Oil and Natural Gas Commission, reported in 1986 GLH 27 in which the court has considered the provisions of Section 124 of the Evidence Act and the claim of privilege. The Division Bench of this Court in paragraph 16 has considered the judgment of the Bombay High Court in the matter of Pandappa v. Shivlingappa, reported in 47 BLR 962 and the judgment of the Privy Council reported in AIR 1943 PC 83 and the provisions of Section 124 of the Evidence Act and the claim of privilege of production of any document in evidence. Another decision relied upon by Mr. Anandjiwala is of the learned single Judge in the matter of Maheshchandra K.Trivedi v. State of Gujarat, reported in 1999(2) GLH 1029, wherein the learned single Judge has considered the provisions of Section 91 of the Cr.P.C. and also discussed about fair trial. In the said judgment, the decision of the Supreme Court in the matter of State of Gujarat v. Shyamlal Mohanlal Choksi, reported in AIR 1965 SC 1251 is referred to in paragraph 6 and in paragraph 6 the court has observed, which reads as under:-

> "6. The ratio of the judgment of State of Gujarat v. Shyamlal Choksi (supra) says about a shelter provided to the accused. Merely because the trial is on, the weapon which is with the accused under that very Section 91 does not remain suspended. It can be used even strategically if the accused feels that he wants to avoid the formality of leading evidence in defence. He can request the Court for production of the document from the prosecution side. The accused can legitimately refer such document,

even while cross-examination of any witness by referring such documents. He can recall the witnesses if examined, provided, permitted by the court and put such question as to certain documents and can crave out the line or alternative line of defence if such documents are brought on record very well in time. The accepted principle of criminal jurisprudence of this Country says that the prosecution should be fair enough and has no privilege to put a curtain on any oral or documentary evidence. The privilege given under Section 91 of the Code of Criminal Procedure if is not used at proper time or stage then, the defence of the accused might be prejudiced. So at any stage, whether at the stage of framing of charge or any at other stage before the accused is compelled to enter into defence, he can legitimately pray that the prosecution be asked to produce certain documents. It is obvious that failure in compliance of the order, if passed below such application, can open another window to the defence side. The learned Sessions Judge while dealing with the application, has not considered all these aspects which were very much relevant looking to the facts and circumstances. It is important to note that it was not the say of the prosecution at the time of resisting the application filed by the accused, that the documents asked by the accused are irrelevant nor it is the finding of the learned Sessions Judge that this application is moved only with a view to delay the proceedings and he is not satisfied about the relevance of the documents asked by the applicant accused in the midst of the trial. This Court is of the view that the submission made by Mr. Pardiwala that the judgment of State of Gujarat v. Shyamlal (supra) was misread by the learned APP at the time of advancing submission before the learned Sessions Judge and therefore only erroneous finding has been recorded is well founded. The error requires to be corrected and the prosecution should be asked to produce the relevant document as prayed in the application Exh.18. It would be proper to observe that it will be open to the prosecution to state before the learned Sessions Judge that any of the documents for which the application is filed, if not available to the prosecution or they are not in custody, then in that event, the Court will have to appreciate the entire

contingency in light of the case put forward by the prosecution and/or defence."

7. According to Mr. Anandjiwala that the learned trial Judge was not right while upholding the objections raised by the P.P. that the letter, which the defence wants to be produced, is a confidential letter.

8. Mr. Prachchhak, learned Addl.P.P., has supported the order under challenge. According to him that the prosecution has examined Shri Venkateshan Thirupugal P.W.4, who has issued sanction to prosecute the accused and the sanction to prosecute is produced which is at Exh.61 and when the request for production of the letter of the Director of ACB is made, the same is not relevant for the defence and the Director of ACB had in his Confidential Letter forwarded the papers, for which the papers were to be examined for according sanction and this being a correspondence between two authorities and this being a confidential letter, the P.P. has rightly objected for production of said document, which the learned Presiding Judge has accepted and submitted that this court will not interfere with such order.

9. As observed earlier and on perusing the file, after the trap was arranged, for which the case was filed against the petitioner accused and the petitioner accused being a public servant under Confidential letter the papers of investigation were forwarded to DDO. It is true that on the top of the letter it is mentioned "confidential". The sanction to prosecute accused is produced on the record of the case at Exh.61. In the criminal trial, it should be fair and in accordance with law. Merely forwarding letter being a confidential letter, the right of defence should not be denied and the Court has to examine in light of the case advanced by the parties and in the present case whether the sanction to prosecute accused is legal/proper or not and the defence has got every right to challenge the above sanction to prosecute issued against the accused. In light of these facts, the request made by the defence for production of document, which has been referred to by the witness during the cross examination, is just and it is not proper for the Presiding Judge to accept the objection raised by the prosecution that the document which the defence wants to be produced is a confidential letter and accordingly only on this ground, the Revision Application filed by the petitioner is required to be allowed and accordingly the request for production of the document is granted. The learned Presiding Judge shall proceed from the stage where the case was adjourned and decide the

matter in accordance with law. Rule is made absolute accordingly.

(D.K.Trivedi,J)

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